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IN THE

Supreme Court of The United States

October Term, 1944

No. 721

JEWELL RIDGE COAL CORPORATION,
a Corporation,

Petitioner

vs.

LOCAL NO. 6167, UNITED MINE WORKERS OF AMERICA, an unincorporated Association, Affiliated with the International Union, United Mine Workers of America, et al.,

Respondents.

BRIEF OF COUNSEL FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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I. JURISDICTION

The jurisdiction of this Court under Section 240 A of the Judicial Code, 28 U.S.C.A. 347, as amended by the Act of February 13, 1925, is not disputed.

II. STATEMENT OF THE MATTER INVOLVED

The fundamental and basic question involved in this case is whether or not travel time in coal mines is worktime under the provisions of Section 7 of the Fair Labor Standards Act of 1938.

III. SUMMARY STATEMENT OF THE FACTS

The petition for certiorari does not, in our judgment give an adequate presentation of the facts involved.

We have not been able to find any dispute in the evidence as to a single essential feature of the mining operations. The plaintiff operated Jewell Ridge and Jewell Valley coal mines in the Western District of Virginia employing 500 and 400 men respectively. At Jewell Ridge when the coal is mined out under one ridge the operation follows the seam into the next ridge so that the track on which the coal is hauled to the tipple comes out of the openings in passing from ridge to ridge. These openings make convenient places of entry for some seventy-two miners who live on top of the ridges and have poor and at times impassable roads from their houses to the main portal. All other miners at Jewell Ridge and all miners at Jewell Valley enter at the mouth of the mine. Those who live in company houses walk or ride to the mine mouth as they please. Those who live a great distance are hauled free to the mine mouth in busses furnished by the company or make their own transportation arrangements.

Each underground employee carries with him into the mine his dinner and his supply of drinking water for the day. The mines have no water system. Each underground employee is required to carry an individual lamp to light

his way or place in the mine. The lamps are electric battery lamps and the batteries weigh about five pounds. The light is fastened to the miner's cap and the battery to his belt.

The first thing all underground employees do upon arrival at the mine mouth is to get their lamps and batteries from the lamp house nearby. They then engage in various activities dependent upon their classification, before entering the mine.

(*a*) *Machinemen.*

Those machinemen who have motors, first get their motors out of the yard and switch them to the sand house where they fill four sand boxes holding approximately two bushels of sand, and oil the motors. They get two gallons of oil from the oil house, approximately 50 pounds of machine bits from the blacksmith shop, and such other equipment as may be necessary, including at times, rope, fingers for the starting box, and jack pipes. Those who have motors, load these supplies and equipment on to their motors. Those machinemen who do not take motors into the mine ride mantrips and load their supplies and equipment on to the tool car of the mantrip on which they ride.

(*b*) *Motormen and Brakemen.*

Motormen and brakemen go through the same process of getting oil and sand for their motors as that followed by the machinemen. Motors are brought out of the mine at the end of each shift for the purpose of being sanded, oiled and occasionally repaired.

(c) *Trackmen.*

Trackmen get from the blacksmith shop such tools as they may have brought out for repair. If bolts and spikes are needed, they get them in kegs weighing approximately 200 pounds and load them into the tool car on the mantrip on which they ride. Some of the trackmen take in steel cross-ties and, once or twice a month, a number of angle bars.

(d) *Bratticemen.*

Bratticemen carry from the supply house to the tool car on the mantrip eight or nine pounds of nails, and as needed, cement, bolts, wrenches, plaster, and rolls of brattice cloth. The latter weigh between 60 and 100 pounds.

(e) *Wiremen.*

Wiremen load on to the tool car each day their usual small tools, Stillson wrenches, hammers, chain blocks, "comealongs", wire splicers, drills, hack saws, hatchets, braces and bits, clip wrenches, and bell wrenches. Copper wire in lengths of 100 feet or more, blow torches and solder are taken in as needed.

(f) *Coal Loaders.*

The coal loaders, constituting the most numerous class of underground employees, take from the blacksmith's shop to the tool car, some four or five times a month such of their working tools as they may have brought out of the mine for repairs. Their tools consist of picks, shovels, augers, breast plates, tamping bars, wedges, axes and saws.

(g) *Services Continue in Transit.*

Each employee follows through to its destination, whatever he may have loaded into a tool car or on to a motor. When the tool car reaches its terminus the employee sees that his tools, equipment and supplies are unloaded and, in most instances, carries them himself to the place at which they are to be used.

THE UNDERGROUND JOURNEY.

The distances from the main portal or drift mouth to the rooms in which the coal is mined are so great that the use of mantrips to haul the men to mantrip stations is necessary to the successful operation of the mines. At Jewell Ridge, the distances from the portal to the various mantrip stations range from 4250 feet to 25,460 feet. At Jewell Valley the distances vary from 4600 to 14,450 feet. The mantrips are made up of coal cars used for hauling coal out of the mines, and are pulled by electric motors.

The mantrips are organized, operated and supervised by the company (R-225-226). They run on schedules fixed by the company (R-225.) They move out on the order of company dispatchers. A foreman rides each mantrip. The men are under the control of this company foreman. He sometimes gives work instructions during the ride. He sees to it that the men sit on the side of the car away from the trolley wire. No more than seven men are allowed to ride on a car. A separate tool car is provided on each mantrip. No man is allowed to carry any tool into the car with him. The rules of the company adopted in conformity with the mining laws of the State of Virginia contain eleven separate safety rules relating to mantrips, five of

which deal with the conduct of the men while on the mantrips (R-493-494). Failure to observe a rule carries a warning for the first offense, two days' layoff for the second offense and five days' layoff or discharge for the third offense (R-494).

If a man misses a mantrip, the company always provides some means for him to get to work (R-227). Furthermore, no walkways are provided along the main haulageways. The track in those haulageways is cluttered with coal.

UNDERGROUND HAZARDS.

The coal seams in the two mines vary in thickness from 32 to 54 inches. In some places the cross-collars supporting the roof are so low they scrape the coal off the cars as they are being hauled out. In places the men could ride or walk erect but, for the greater part of the ride, they sit bent over or stooped, and after leaving the main haulageways they must, in places, bend far over or else get down on the mourner's bench of the coal car in order to avoid injuries from contact with the roof. They run the risk of falling rock or slate, of broken trolley wires, and of wrecks occurring on the mantrip.

Coal mining is a hazardous occupation (R-164). There is a greater hazard in working underground than outside (R-165). The overall picture of the dangers and the necessity for unceasing vigilance is graphically portrayed in the language of the State Mine Inspector of Virginia (R-499-503) and of the witness Tetlow (R-325-326; 359-361). Statistics for the year 1941 show that approximately one man out of every ten engaged in coal mining in the United States was injured during that year (R-333).

The District Judge found that, in view of those statistics, injuries in plaintiff's mines on mantrips were surprisingly few in number and extent. The evidence disclosed that two men had been killed, one man had received a broken back, another had received injuries to his back, while another had his ribs broken; one man had been burned by a broken trolley wire while riding a gathering motor, and four other men had received injuries. The Company kept no record of injuries unless the accident was compensable, i. e., the workman lost seven days from his work.

After leaving the mantrip at the mantrip stations, the coal loaders in Jewell Ridge pick up the powder they will need for the day, get such tools as they brought in from the outside, and carry the tools, powder, lamp, and their drinking water for the day, as they walk to their usual working places.

The distances walked vary from about 500 feet to about 1500 feet. The roof is lower than it is in the haulageways, and the workmen must walk in many places in a stooped position or all bent over (R-372). In places, the back of a man scrapes the roof as he walks and thereby wears out the top of his jacket (R-462). When a man learns to walk in that low coal, he walks with his hands as much as his feet. (R-270)

While walking in the mines, the men must be on the alert to avoid injuries from tram trips catching them in narrow places. They must also avoid contact with the exposed trolley wire. Because of this danger, a rule of the company forbids the men to carry tools on their shoulders.

The exit from the mines at the end of the shift is substantially a reverse process of the entrance into the mines.

They bring to the powder station unused powder, and such tools as need repair.

The mantrips at Jewell Ridge start running at seven a..m. and follow one another not closer than 500 feet. Pay time starts at eight o'clock. At Jewell Valley the mantrip starts at seven thirty a. m. and pay time starts there at eight o'clock.

DECISION OF THE DISTRICT JUDGE.

The District Judge did not make any finding of facts contrary to the facts above enumerated. His findings include general statements, such as the following "Employees leave the trains at the 'mantrip stations' which are nearest to their respective places of work, and walk the rest of the way."

"After securing their lamps, various men do various things before taking the mantrip. ..... These preliminary activities require variously from three to ten minutes."

CUSTOM, COLLECTIVE BARGAINING, AND ADMINISTRATIVE RULING.

The District Judge devotes more than half of his findings of fact to a discussion of these three subjects which are concerned with "face to face" method of computation. His findings omit mention of the second Illinois Agreement (Pl. Ex. #40-R. 779-785), and the Ickes-Lewis Agreement of November 3, 1943 (Pl. Ex. #41 - R. 793-795). These two agreements recognize that coal miners are entitled to pay from portal to portal. It is also clear that during the time in question, April 1, 1943 to June 20, 1943,

the miners were working pursuant to a telegram from the President of the United States (Pl.-Ex. #29 R-708), in the expectation that any contract obtained would be retroactive to April 1, 1943.

It is not in the record, but it is a matter of common knowledge, and worthy of mention here, that on December 17, 1943, the International Union, United Mine Workers of America entered into a contract with the operators producing approximately seventy per cent of the coal tonnage of America, it which it was recognized that the miners were entitled to pay from portal to portal.

ARGUMENT

We respectfully submit that the majority opinion of this Court in the case of *Tennessee Coal, Iron & Railroad Company v. Muscoda Local #123, et al,* 321 U.S. 590, gives a decisive and controlling answer to all the arguments advanced by petitioner. The language of Judge Parker in the instant case, gives, we submit, an accurate interpretation of that opinion. We quote his language:

> "That the decision of the Court was understood by the Court itself to be based upon the underlying facts of the case and not merely upon the interpretation which the lower courts had placed upon those facts, is shown by the concurring opinions, which stressed the interpretation made in the findings of the lower courts. If the interpretation of the facts in these findings had been the controlling consideration in the majority opinion, there would, of course, have been no occasion whatever for the concurring opinions. Furthermore, where the facts of two cases are substantially the same, the law should not be applied differently because trial judges have

looked at them in a different way. The record shows that travel in an iron mine is the same sort of thing as travel in a coal mine. The findings of the trial courts as to whether upon the basic facts travel time was part of the work week within the meaning of the statute were mere conclusions involving mixed questions of law and fact; and, the basic facts being the same, an appellate court cannot distinguish cases on the basis of such conclusions. In such case, the difference in conclusions involving mixed questions of law and fact is necessarily attributable to a difference in views as to the law or its application.

"Equally vain is the attempt to distinguish the Supreme Court's decision on the ground that no such custom or bargaining agreements existed in the case of the mining of ore as are shown in the case before us. The Supreme Court decided the point on two grounds: (1) that the custom and agreements relied on where not sufficiently shown and (2) that they were immaterial in any event."

Petitioner argues the economic effects in vain under the undisputed facts of common knowledge. It is a matter of common knowledge that the majority of the coal operators throughout America have gone upon a portal-to-portal basis. We believe it is also a matter of common knowledge that the operators went upon this basis without waiting for any price adjustments.

The opinion of the U. S. Circuit Court of Appeals for the Fourth Circuit clears up the misunderstanding of the facts and the law manifested by the District Judge. There is no occasion for this Court to express itself again.

Wherefore, we respectfully submit that the Petition for Certiorari should be denied.

Respectfully submitted,

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I hereby certify that I have mailed a copy of the foregoing brief in opposition to petitioner's petition for writ of certiorari to William A. Stuart, Esq., Abingdon, Virginia; and George Richardson, Jr., Esq., 506 Commercial Bank Bldg., Bluefield, West Virginia, attorneys of record for petitioners.

This_____day of_____, 1944.

CRAMPTON HARRIS